IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12151 of 2006

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VADODARA JULLA KHADI GRAMODYOGSAHAKARI SANGH LTD., - Petitioner(s)
Versus
MADHUBEN DESAIBHAI MALI - Respondent(s)

==========

Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR NIRAV C THAKKAR for Respondent(s) : 1,

==========

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 11/09/2006

ORAL JUDGMENT

Rule returnable today. Mr.Thakkar waives service of rule. With the consent of the learned

advocates, the matter is heard and disposed of today.

The petitioner, Vadodara Jilla Khadi Gramodyog Sahakari Sangh Ltd. (hereinafter referred to as **'the Sangh'**) challenges the judgment and order passed by the Labour Court, Vadodara in Recovery Application No.406 of 2002 made on 8th March, 2006. The respondent is the workman.

It appears that by award dated 21st April, 1999 made by the Labour Court, Vadodara in Reference (L.C.V.) No.19 of 1992, the Sangh was directed to reinstate the workman in service with the benefits of continuity, back-wages, interest and costs. The said order was modified by this Court (Coram: D.H. WAGHELA, J.) on 18th August, 2000 in Special Civil Application No.5006 of 1999. Pursuant to the said order the workman has been reinstated in service on 17th October, 2000. To recover the amount of back-wages the workman preferred Recovery Application No.406 of 2002 before the Labour Court, Vadodara. In the said proceeding the Sangh and the workman filed a joint purshis Exh.14. Under the said purshis the

Sangh agreed to pay a sum of Rs.1,35,638=20 to the workman, of which Rs.51,000/- was paid by cheque dated 26th April, 2004. The Sangh also agreed to pay another Rs.84,368=20 on 17th July, 2004. The Sangh, however, by Application Exh.16 filed on 28th July, 2004 rescinded from the said agreement. According to the Sangh the workman had agreed to resign from service. In lieu thereof the Sangh had agreed to pay the aforesaid sum of Rs.1,35,638=20. However, the workman did not resign as agreed. The Court, therefore, should decide Recovery Application.

The Court below was, however, of the opinion that the factum of resignation was not recorded in the purshis and the parties were bound by the terms of the settlement they had agreed. Accordingly, by impugned order the Sangh has been directed to pay to the workman a sum of Rs.84,638=20. Therefore, the present petition.

Mr.Clerk has submitted that by now the Sangh has paid a sum of Rs.1,42,219=60 to the workman in compliance with the above referred award dated 21st

April, 1999 as modified by this Court on 18th August,2000. He has submitted that now only a sum of Rs.18,000/- remains due and payable to the workman. He has submitted that the Court below has erred in imposing the aforesaid agreement upon the Sangh. Mr.Thakkar has submitted that the aforesaid application Exh.16 requires to be decided. He has submitted that the workman had never agreed to resign from service. In view of the agreement the workman also withdrew the Recovery Application No.18 of 2003.

It is indeed true that the purshis Exh.14 does not record that the workman had agreed to resign from service. Nevertheless, if one of the parties, that is the Sangh herein, has rescinded from the agreed terms, the said agreement ought not to have been imposed upon the Sangh. It should be noted that the workman had not altered her position to her detriment pursuant to the said agreement. In the circumstances, it was the duty of the Labour Court to compute the entitlement of the workman and to issue appropriate direction.

In above view of the matter, this petition is allowed. The judgment and order dated 8th March, 2006 passed by the Labour Court, Vadodara in Recovery Application No.406 of 2002 is quashed and set aside. The Recovery Application No.406 of 2002 is revived. The Labour Court, Vadodara will consider and decide the said Recovery Application No.406 of 2002 on merits without being influenced by the purshis Exh.14 or the application Exh.16.

Rule is made absolute in the above terms. The parties shall bear their own cost.

In above view of the matter, both the learned advocates agree that the workman may revive Recovery Application No.18 of 2003 which she had withdrawn as recorded in the aforesaid purshis Exh.14.

(MS. R.M.DOSHIT, J.)

sompura